

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

City of Long Lake,

Court File No. 27-CV-23-9758

The Hon. Laurie J. Miller

Plaintiff,

vs.

City of Orono,

Defendant.

**DEFENDANT'S MEMORANDUM OF LAW IN RESPONSE TO
PLAINTIFF'S MOTION FOR AN ORDER TO SHOW CAUSE**

INTRODUCTION

On July 14, 2023, the Court granted the City of Long Lake's ("Long Lake") motion for temporary injunctive relief. The Order enjoined the City of Orono ("Orono") from directly or indirectly committing any violation of the Contract for Fire Protection and the Contract for Joint Ownership to which Orono and Long Lake are parties, and from interfering with the Fire Service Contract to which Long Lake and the Village of Minnetonka Beach are parties. Additionally, the Order enjoined Orono from **recruiting** Long Lake firefighters to begin working for the Orono Fire Department and from **using**, or **hindering** Long Lake's use of, Fire Station 1 and Fire Station 2 before the end of this litigation. Since the Order was issued, Orono has not actively recruited Long Lake firefighters, nor has it interfered with Long Lake's use of Fire Station 2. Since Orono is in

full compliance with the Order, Long Lake's Motion for an Order to Show Cause must be denied.

FACTUAL BACKGROUND

A. The Hearing.

On June 23, 2023, Long Lake filed a Notice of Motion and Motion seeking a preliminary injunction along with a Memorandum of Law and Proposed Order. *Index # 4, Plaintiff's Memorandum of Law and # 7, Plaintiff's Proposed Order*. Both the Memorandum of Law and Proposed Order sought relief prohibiting Orono from "directly **soliciting** employment of ... the LLFD firefighters."¹ *Index # 4 at 11 and 15; Index # 7 at 2* (emphasis added). At the June 30, 2023 preliminary injunction hearing, Long Lake's counsel, Christopher Yetka, clarified for the Court that Long Lake was not requesting an Order precluding Orono from hiring Long Lake Fire Department ("LLFD") firefighters. Long Lake's counsel simply requested Orono not directly approach their firefighters. *Declaration Ashley Ramstad, Ex. 1, Transcript Court File No. 27-CV-23-9758 at 20:18-22*. At the same time, Long Lake's counsel acknowledged, "There's nothing that ... we can do about them advertising generally for firefighters..." *Id. at 21:2-3*.

When discussing with the Court what relief Long Lake was seeking, the Court asked Long Lake's counsel: "What you're seeking is an order telling them they cannot approach your firefighters?" *Decl. Ramstad, Ex. 1 at 24:67*. Long Lake's counsel responded,

¹ Merriam Webster defines solicit as "to approach with a request or plea." *Solicit*, MIRRIAM WEBSTER (Revised Ed. 2022).

“Yup. Directly **solicit** our firefighters to work for the Orono Fire Department or to interfere with their work as Long Lake firefighters.” *Id.* at 24:8-12 (emphasis added).

The Court further inquired, “Okay. What if they generally advertise for firefighters, and your firefighters respond?” *Decl. Ramstad, Ex. 1* at 24:12-13. Long Lake’s counsel responded, “I don’t know that that is something that we can preclude, Your Honor.” *Id.* at 24:15-17. Long Lake’s counsel additionally told the Court, working for more than one fire department is not unheard of and “[w]e’re not saying that they can’t generally advertise.” *Id.* at 25:21-25. After discussion of the issue of recruitment and hiring of LLFD firefighters, the Court noted there might be an administrative burden to the Court in enforcing the injunction due to questions of whether a firefighter was recruited or chose to work for the Orono Fire Department “under his or her own steam.” *Id.* at 26:9-16.

B. The Order.

On July 14, 2023, the Court issued its Order temporarily enjoining Orono from:

2. . . . directly or indirectly committing any violation of the Contract for Fire Protection and the Contract for Joint Ownership to which the City of Long Lake and the City of Orono are parties, and from interfering with the Fire Service Contract to which the City of Long Lake and the Village of Minnetonka Beach are parties.

3. . . . recruiting Long Lake firefighters to begin working for the Orono Fire Department, seeking a transfer of Long Lake firefighters’ pension funds, or otherwise interfering with the work of the Long Lake firefighters before the end of this litigation.

4. . . . using, or hindering the City of Long Lake's use of, Fire Station 1 and Fire Station 2 before the end of this litigation, except to the extent the City of Long Lake agrees to such use.

Index # 24, Order at 1-2.

C. Post-Order Actions.

Even after clarifying for the Court, Long Lake could not preclude Orono from hiring firefighters, Long Lake's counsel e-mailed Orono's counsel on July 18, 2023 asserting the Order precludes Orono from hiring any firefighters from Long Lake for the pendency of the litigation and the Contract for Fire Protection.² *Declaration of Sarah Greening* ¶ 3, *Ex. B*. Counsel for Orono responded the Order does not prohibit hiring because it does not clearly say so and reiterating to counsel they acknowledged at the hearing LLFD firefighters could apply for a position at the Orono Fire Department. *Decl. Ramstad, Ex. 2, 7/19/23 e-mail*.

On July 13, 2023, Orono posted job openings for part-time and paid-on-call firefighters. *Decl. Ramstad, Ex. 3, Job Posting*. On October 9, 2023, Orono hired the first 11 firefighters for the Orono Fire Department. *Declaration Denny Walsh*, ¶ 5. They will start administrative duties right away and will start their training January 1, 2024 to be ready

² Long Lake's counsel sent this e-mail after Mayor Walsh posted a document sent to Orono City Council by Orono's counsel explaining the Order did not prohibit Orono from hiring LLFD firefighters. Long Lake argues Mayor Walsh's decision to publish a letter from Orono's counsel to City Council serves as an unfettered waiver of privilege of any and all litigation related communications between counsel and Orono and thus, will be seeking in discovery all communications between Orono's counsel, Mayor Walsh, and Orono City Council relating to litigation strategy in this matter. Although Orono understandably disagrees with Long Lake's position, this issue is irrelevant to the matter currently before the Court.

for service on July 1, 2024 when the Orono Fire Department will start servicing the Navarre area territory, which represents 30% of Orono. *Id. at* ¶ 5.

Eight of these firefighters also work for the LLFD. Five of them have provided declarations demonstrating there was nothing nefarious or improper about their hiring. Justin Hinker, a resident of Tonka Bay, has been a firefighter with the LLFD for approximately two years and applied to the Orono Fire Department on August 8, 2023. *Declaration Justin Hinker* ¶¶ 2, 3. Mr. Hinker was never directly approached by anyone from Orono to apply to the Fire Department. *Id. at* ¶ 4. Michael Johnsrud, a resident of Orono, has been a firefighter for the LLFD for approximately three years and applied to the Orono Fire Department on July 31, 2023. *Declaration Michael Johnsrud*, ¶¶ 2, 3. He was never directly approached by anyone from Orono to apply to the Fire Department. *Id. at* ¶ 4. Ryan Kanive, a resident of Orono, has been a firefighter for the LLFD for approximately 13 years. *Declaration Ryan Kanive*, ¶¶ 2, 3. He applied to the Orono Fire Department on July 25, 2023. *Id. at* ¶ 5. He was never directly approached by anyone at Orono to apply to the Fire Department. *Id. at* ¶ 4. James Seals, a resident of Minnetrista and husband to former Orono City Council Member Victoria Seals, has been a firefighter for the LLFD for approximately five years and applied to the Orono Fire Department on July 24, 2023. *Declaration James Seals*, ¶¶ 2, 3. Mr. Seals was never directly approached by anyone from Orono to apply to the Fire Department. *Id. at* ¶ 4. Indeed, he made the decision to apply approximately five years ago when the idea of Orono starting their own fire department was known to him. *Id.* To Mr. Seals' knowledge, all of the firefighters who have been hired by the Orono Fire Department decided they would apply prior to

this pending lawsuit. *Id. at* ¶ 4. Finally, Benjamin Veach, a resident of Orono and husband of current Orono City Council Member Maria Veach, has been a firefighter for the LLFD for approximately six years. *Declaration Benjamin Veach*, ¶¶ 2, 3. Mr. Veach was never directly approached by anyone from Orono to apply to the Fire Department. *Id. at* ¶ 4. All of the firefighters believe they have the right to work where they choose. *Decl. Veach*, ¶ 6; *Decl. Seals*, ¶ 6; *Decl. Kanive*, ¶ 6; *Decl. Hinker*, ¶ 7; and *Decl. Johnsrud*, ¶ 6. On September 20, 2023, Orono Fire Chief Van Eyll sent a text message to seven LLFD firefighters who had already applied to the Orono Fire Department stating, “It would be great to have you at the Recruitment Open House on Wednesday, September 27 from 7-9.” *See Declaration Charles Miner, Exhibit B*. These firefighters were originally scheduled to be hired on August 28, 2023, but the City postponed the hiring to October 9, 2023 in light of the upcoming mediation on September 26, 2023. *Declaration James Van Eyll*, ¶ 12. Chief Van Eyll did not view this text as a violation of this Court’s Order because the firefighters had already applied and were in the process of being hired by Orono. *Id.*

Unfortunately, the LLFD firefighters who have applied to Orono have faced persecution and harassment. Chief Van Eyll has been receiving reports from potential applicants they are being ostracized and called “traitors” by fellow firefighters and firefighter leaders for expressing their interest in serving the community as firefighters with the Orono Fire Department. *Decl. Van Eyll*, ¶ 18. Indeed, LLFD firefighter Cole Farley sent a text message to a potential applicant, a former LLFD firefighter who planned to apply to the Orono Fire Department, asking him if the rumors were true that he was joining the Orono Fire Department. *Declaration Cole Farley*, ¶ 4. Mr. Farley added, “I have

always known that your decision making skills were sus, but now you're not even trying." *Id.* The applicant discussed this text conversation with Chief Van Eyll – the applicant did not think the messages were in jest. *Decl. Walsh*, ¶ 15; *Decl. Van Eyll, Ex. 1, Text Message*. Additionally, several of the LLFD firefighters have heard leadership from Long Lake continuously make disparaging comments about Orono and Orono's leadership, creating a hostile environment for the LLFD firefighters who have applied to the Orono Fire Department. *Decl. Seals*, ¶ 10.

D. Construction of Structure on Orono Property.

Since Long Lake has not agreed to any transition of the use of Fire Station 2 prior to the end of the Contract for Fire Protection, Orono necessarily needs to utilize a different structure for the Orono Fire Department's base of operations beginning to service the Navarre area July 1, 2024. *Declaration Adam Edwards*, ¶ 4. As such, Orono has engaged an architect to design a building on the City of Orono owned land where Fire Station 2 is located that can be constructed and operated without hindering or interfering with Long Lake's ability to respond to calls for service out of Fire Station 2. *Id. at* ¶ 3. Orono has walked the property with an architect, and the preliminary plans are to build a two-bay addition on the north side of the existing Fire Station 2. *Id. at* ¶ 4. The addition would be immediately adjoining Fire Station 2 with an independent exterior wall that could connect to the existing Fire Station 2 once the Contract for Fire Protection has ended. *Id.*

The structure Orono proposes would be used solely by Orono and would not hinder or interfere with LLFD's ability to respond to calls for service out of Fire Station 2. *Decl. Edwards*, ¶ 5. Orono will work with the architect and contractor to ensure the LLFD

will not be hindered from providing services to Orono and Long Lake's communities during the construction. *Id.* Orono does not, in any way, want to hinder LLFD's ability to continue to provide Fire Protection Services for the duration of the existing contracts.

ARGUMENT

I. PLAINTIFF'S MOTION FOR AN ORDER TO SHOW CAUSE MUST BE DENIED AS ORONO IS IN COMPLIANCE WITH THIS COURT'S ORDER.

Minnesota Statutes § 588.01, subd. 3, provides "[c]onstructive contempts are those not committed in the immediate presence of the court, and of which it has no personal knowledge, and may arise from ... disobedience of any lawful judgment, order, or process of the court." Whether civil contempt has occurred is evaluated using the preponderance-of-the-evidence standard. *Emery Air Freight Corp. v. Local 544*, 379 N.W.2d 539, 543 (Minn. Ct. App. 1985).

The purpose of the Court's civil contempt power is to provide it "with the means to enforce its orders." *Erickson v. Erickson*, 385 N.W.2d 301, 304 (Minn. 1986). A court's order and findings of civil contempt should be designed to induce future compliance. *Mahady v. Mahady*, 488 N.W.2d 88, 89 (Minn. Ct. App. 1989) (recognizing "civil contempt is said to give the contemnor the keys to the jail cell, because compliance with the order allows him to purge himself and end the sanction."). A district court has "inherently broad discretion" to hold a person in contempt if that person acted "contumaciously, in bad faith, and out of disrespect for the judicial process." *Erickson*, 385 N.W.2d at 304 (citation omitted). And the Minnesota Supreme Court has recognized:

If the duty [to be performed] is one specifically defined by a proper decree of the court, it must be free to compel

performance by methods which are speedy, efficient, and sufficiently flexible to meet the problem at hand.

Hopp v. Hopp, 156 N.W.2d 212, 216 (Minn. 1968) (stating further the judge's responsibilities should not be frustrated by "delay and formalism"). Additionally, a court's contempt power exists independent of the statutory authority provided in Minnesota Statutes Chapter 588. *In re Cary*, 206 N.W. 402 (1925); *accord. State v. Sports & Health Club, Inc.*, 392 N.W.2d 329, 336 (Minn. Ct. App. 1986) ("The power to punish for contempt is an inherent power of constitutionally created courts in Minnesota" and "exists independent of the contempt statutes").

A. Orono's Hiring of Long Lake Firefighters Does Not Violate the Court's Order.

Orono's hiring of firefighters who also work for the LLFD does not violate this Court's Order. The Court acknowledged at the hearing the potential for the administrative burden on the Court to enforce an injunction because of the parties disagreeing what constitutes recruitment and now Long Lake has brought this Motion not only challenging what constitutes recruitment but asking this Court to add language to its Order he did not initially request. However, a party is "bound by the pleadings." *Roberge v. Cambridge Co-op. Creamery Co.*, 67 N.W.2d 400, 403 (Minn. 1954) (holding "relief cannot be based on issues that are neither pleaded nor voluntarily litigated"); *see also Phelps v. Benson*, 90 N.W.2d 533, 548 (Minn. 1958). Since neither the Complaint nor Plaintiff's motion papers in support of its request for injunctive relief sought to prohibit hiring, Long Lake's request the Court prohibit Orono from hiring LLFD firefighters is

improper. Long Lake is bound by its pleadings and its counsel's representations to this Court.

Long Lake's counsel clarified at the June 30, 2023 hearing that Long Lake was not requesting an Order precluding Orono from hiring LLFD firefighters. Rather, the request was for Orono not to directly approach their firefighters. *Decl. Ramstad, Ex. 1 at 20:18-22*. In other words, to prohibit recruiting. Orono has not done so.

Long Lake's sole evidence alleging Orono has been actively recruiting LLFD firefighters is a text message from Orono Fire Chief Van Eyll to several individuals, seven of them being active LLFD firefighters, inviting them to the Orono Fire Department's Open House. However, as previously mentioned, all seven of those LLFD firefighters had already applied to the Orono Fire Department and decided to apply on their own, without any recruiting from anyone at Orono. Long Lake's logic would likely prohibit Orono from having any communications with LLFD firefighters even after they have applied on their own free will. Moreover, these individuals were already set to be hired prior to that text being sent.

Quite frankly, Long Lake is creating a toxic situation. Many applicants and potential applicants have told Chief Van Eyll they have been subjected to harassment from other LLFD firefighters even for expressing an interest in applying. *Decl. Farley, ¶ 4; Decl. Van Eyll, ¶¶ 17, 18*. Additionally, several of the LLFD firefighters have continued to hear Long Lake leadership make disparaging comments about Orono and Orono's leadership. *Decl. Seals, ¶ 10*. Nonetheless, the firefighters continue to want to serve the communities they live in and have been serving for years and thus, applied to work for

the Orono Fire Department. Orono has and will continue to comply with the Court's Order by not actively recruiting or directly soliciting LLFD firefighters or interfering with their work as such. Consequently, Long Lake's Motion for an Order to Show Cause must be denied.

B. Orono's Planned Construction of a Structure Near Fire Station 2 Does Not Violate the Court's Order.

This Court's Order enjoins Orono from using, or hindering the City of Long Lake's use of, Fire Station 1 and Fire Station 2 before the end of this litigation, except to the extent the City of Long Lake agrees to such use. The Contract for Joint Ownership of Fire Station 2 provides Long Lake will be responsible for operating and maintaining the fire station and agrees to oversee all activities and operations at Fire Station 2 under the same terms and conditions as previously agreed to in the existing Fire Protection Agreement. *Decl. Ramstad, Ex. 4, Contract for Joint Ownership*. The Contract for Fire Protection defines Long Lake's operational responsibility as managing the operation of the LLFD and for managing the ongoing operation and maintenance of the Fire Station. *Decl. Ramstad, Ex. 5, Contract For Fire Protection*. Nothing in the contracts provide Long Lake is responsible for the operations or maintenance of the land Fire Station 2 is located on and owned by Orono. Indeed, since the construction of Fire Station 2, Orono has been responsible for all of the landscaping and snow removal for the property Fire Station 2 is located on. *Decl. Edwards, ¶ 6*. The maintenance and snow removal was, and is, paid for with Orono City funds. *Id.* Further, Orono intends to continue to provide these vital services to Fire Station

2 as timely removal of snow and ice is critical to the readiness of the facility to serve the community. *Id.*

As previously mentioned, the Orono Fire Department needs to be operational by July 1, 2024 because Orono is taking over 30% of Orono's Fire Protection Service Area pursuant to the existing contracts with Long Lake. There is no reason Orono would want to hinder services to any of its own citizens regardless of who is providing them, including hindering LLFD's use of Fire Station 2 to provide said services. Interestingly, Long Lake directs the Court's attention to the provision of the Order acknowledging "[t]he citizens of both Long Lake and Orono are entitled to continue to receive essential fire protection services..." *Index # 24, Order at 28-29*. Yet, Long Lake would have this Court prohibit Orono from taking any steps to develop its own fire department even though it will be required to provide services to 30% of Orono by July 1, 2024, approximately nine months from now. This unreasonable and untenable position reveals Long Lake's ulterior motive, which is to thwart Orono's ability to build its own Fire Department.

Orono's preliminary plans to build a separate structure on its own land will not hinder Long Lake's use of Fire Station 2 nor does Orono's plan include using Fire Station 2. Orono has provided this Court with the Declarations of its Fire Chief and the City Administrator/Engineer unequivocally demonstrating the construction of this structure will not interfere with or hinder Long Lake's use of Fire Station 2. Long Lake has not provided this Court with one scintilla of evidence to the contrary. Counsel's statements

are obviously not evidence. Orono is in compliance with this Court's Order. Under the circumstances, Long Lake's Motion for an Order to Show Cause must be denied.

II. PLAINTIFF'S MOTION IMPROPERLY SEEKS RELIEF BEYOND AN ORDER TO SHOW CAUSE.

"In an initial contempt proceeding, the court may find the obligor in conditional contempt and set conditions to allow the obligor to purge himself of the contempt. At a subsequent stage, the obligor is entitled to be heard on questions of performance or excusable non-performance of purging conditions." *Mahady v. Mahady*, 448 N.W.2d 888, 891 (Minn. Ct. App. 1989). "The court may adjudge the obligor in contempt and order confinement and order confinement only if, at the second stage, it determines that the obligor failed without excuse to comply with the purge conditions." *Id.*

Here, this Court has not found Orono in conditional contempt. Prior to issuing a contempt order, a court must make findings regarding a party's ability to comply with those purge conditions. *Hopp v. Hopp*, 156 N.W.2d 212, 216 (Minn. 1968); *Mahady v. Mahady*, 448 N.W.2d 888, 890 (Minn. Ct. App. 1989). Additionally, a court must give a contemnor the opportunity to testify and a meaningful opportunity to be heard. Minn. Stat. § 588.09 ("When the person arrested has been brought into court, or has appeared, the court or officer shall investigate the charge by examining the person and the witnesses for and against the person, for which an adjournment may be had from time to time, if necessary.").

The Court has not issued an Order to Show Cause, and Orono is currently compliant with the Court's Order. Should the Court issue an Order to Show Cause, Orono

has the right to appear to provide testimony in its defense. The undersigned raises this issue as Plaintiff's Memorandum of Law and proposed Order appear to seek relief beyond an Order to Show Cause.³

CONCLUSION

The Court's Order does not prohibit the hiring of LLFD firefighters, nor does it prohibit Orono from constructing a stand-alone structure on its property. Accordingly, Orono respectfully requests the Court deny Long Lake's Motion to Show Cause.

Dated: October 25, 2023

s/Paul Donald Reuvers
Paul Donald Reuvers, #0217700
Ashley M. Ramstad, #402446
IVERSON REUVERS
9321 Ensign Avenue South
Bloomington, MN 55438
(952) 548-7200
paul@iversonlaw.com
ashley@iversonlaw.com

Attorneys for Defendant City of Orono

³ For example, Long Lake's excessive request for an award of attorney's fees in bringing this Motion is not properly before the Court. While Minnesota law permits a party to recover attorneys' fees, costs, and expenses sustained as part of the prosecution for contempt of court, the issue before the Court is whether an Order to Show Cause should issue. It should not.